

REMARKS

Applicants respectfully request entry of the amendments and remarks submitted herein. Claims 14 and 27 have been amended herein, and claim 24 has been canceled herein without prejudice to continued prosecution. Support for the amendments to claim 14 can be found, for example, at page 5, line 10-20 of the present application.

Claims 14, 16-18, 20-23, 26-30 and 32-37 are currently pending. Reconsideration of the pending application is respectfully requested.

Claim Objections

Claim 24 is objected to under 37 CFR §1.75(c) as being of improper dependent form for failing to further limit the subject matter of the previous claim. According to the Examiner, the percentage of maltitol recited in claim 24 is improper in view of the percentage of maltitol already recited in claim 14, from which claim 24 depends.

Applicants have canceled claim 24 herein without prejudice to continued prosecution. Accordingly, Applicants respectfully submit that the objection to the claim is moot.

The 35 U.S.C. §112 Rejections

Claims 27-30 and 32 stand rejected under 35 U.S.C. §112, first paragraph, as the Examiner asserted that those claims fail to comply with the written description requirement. According to the Examiner, while "there is support in Applicants' specification for reciting 'recycling a part or all of said solidified maltitol into step a) until the solidified maltitol obtained in step f) has a maltitol content of from about 95% to about 98%, from about 95% to about 97% or from about 95.5% to about 96.5%,['] there is no support for reciting a maltitol content of from about 85% to about 97%" (OA at page 3). This rejection is respectfully traversed with respect to the pending claims.

Without acquiescing to the Examiner's rejection, independent claim 27 has been amended herein to require that the maltitol content be from about 92% (w/w), instead of 85%, to about 97% (w/w). As indicated by the Examiner, the newly claimed range has support in the

specification. See, for example, page 3, line 20. In view of the amendments herein, Applicants respectfully request that the rejection of claims 27-30 and 32 under 35 U.S.C. §112, first paragraph, be withdrawn.

Claims 27-30 and 32 stand rejected under 35 U.S.C. §112, second paragraph, as the Examiner asserted that those claims are indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. According to the Examiner, it is “unclear how the step of recycling solidified maltitol into step a) until obtaining the recited maltitol content differs from repeating step g)” (OA at pages 3-4; emphasis in original).

Applicants have amended step g) in claim 27 for clarification purposes. In view of the amendments herein, claim 27 is clear and is not indefinite. Accordingly, Applicants respectfully request that the rejection of claims 27-30 and 32 under 35 U.S.C. §112, second paragraph, be withdrawn.

The 35 U.S.C. §103 Rejections

Claims 14, 16-18, 20-24, 26-30 and 32-37 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Beauregard et al. (US Patent No. 6,458,401). According to the Examiner, it is the Examiner's position that the open rotating receptacle of Beauregard et al., where an air atomizing nozzle is used to spray an aqueous syrup onto the rotating bed, is equivalent to the fluid bed required in pending claim 14 (OA at pages 7-8). The Examiner goes on to state that, since “Beauregard et al. discloses an open bed wherein air is used to disperse maltitol syrup onto maltitol seed material, it is clear that the mixing process takes place in a fluid bed” (OA at page 8). This rejection is respectfully traversed with respect to the pending claims.

As indicated herein, independent claim 14 has been amended to recite that the turbulating step is done in a stream of gas that is either nitrogen or air at a temperature of 80°C to 95°C. Applicants note that independent claim 27 already recites that the gas has an inlet temperature between about 80°C and the melting temperature of the maltitol powder (see step b). Since Beauregard et al. discloses using an open rotating receptacle (see, for example, the Abstract), this initial step in Beauregard et al. inherently occurs at room temperature. Beauregard et al. does not

disclose or even suggest to one skilled in the art that gas could be used to turbulate the maltitol powder and maltitol syrup, nor does Beauregard et al. disclose or even suggest to one skilled in the art that the gas could be heated and used at a temperature of from about 80°C to about 95°C.

The Examiner asserted that "given Beauregard et al. disclose a process substantially similar to that presently claimed, absent evidence to the contrary in the record, one would expect the same results" (OA at page 9). As Applicants have explained, however, in the Responses filed on June 21, 2010 and November 1, 2010, the claimed processes as recited in independent claims 14 and 27 is quite different than anything disclosed in Beauregard et al. For example, both the June 21, 2010 Response and the November 1, 2010 Response detail the advantages provided by the claimed turbulating step as well as the differences in the equipment required by the claimed steps compared to the process described by Beauregard et al.

As explained herein, one of skill in the art, reading Beauregard et al., would not arrive at the claimed processes. Thus, the pending claims are not obvious over Beauregard et al. Accordingly, in view of the amendments and remarks herein, Applicants respectfully request that the rejection of the pending claims under 35 U.S.C. §103(a) be withdrawn.

CONCLUSION

Applicants respectfully request allowance of claims 14, 16-18, 20-23, 26-30 and 32-37. If a telephone call to the undersigned would expedite prosecution, the Examiner is encouraged to do so. Please apply the fee for the enclosed Petition for Extension of Time and any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

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